

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ANTIQUE AUTO BATTERY
MANUFACTURING COMPANY,**

Plaintiff,

vs.

**NEW CASTLE BATTERY
MANUFACTURING COMPANY,**

Defendant.

**2:05cv427
Electronic Filing**

Judge Cercone
Magistrate Judge Caiazza

MEMORANDUM ORDER

On April 4, 2005 this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636 (b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On November 22, 2005, the Magistrate Judge issued a Report and Recommendation (Document No 15) recommending that the portion of the Motion to Dismiss filed pursuant to F. R. Civ. P 12(b)(6) by Defendant New Castle Battery Manufacturing Company (Document No. 11) be granted without prejudice as to the claim for unfair competition, granted with prejudice as to the claim for misappropriation of trade secrets, and denied as to the conversion claim. It was also recommended that the portion of the Defendant's Motion to Dismiss filed pursuant to F. R. Civ. P. 12(b)(7) be deferred pending further development of the record. Service of the Report and Recommendation was made on all parties. Objections to the Report and Recommendation (Document No. 16) were filed on December 8, 2005. No response was filed.

After a review of the pleadings and documents in the case, together with the Report and Recommendation, the following ORDER is entered:

AND NOW, this 22nd day of February, 2006, IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss is granted in part, denied in part, and deferred in part as more fully explained above. The Report and Recommendation of Magistrate Judge Caiazza dated November 22, 2005, is hereby adopted as the opinion of the court.



David Stewart Cercone
United States District Judge

cc: Honorable Francis X. Caiazza
United States Magistrate Judge

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